

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRIAN ZAHN,
Plaintiff,

v.

BRIAN APPLEBURY, et al.,
Defendants.

No. CV-05-371-FVS

ORDER

THIS MATTER comes before the Court for resolution of three motions. The plaintiff is representing himself. The defendants are represented by Assistant United States Attorney Frank W. Wilson.

BACKGROUND

On or about January 8, 2001, the U.S. Army Corps of Engineers ("the Corps") discharged Brian Zahn. He alleges that the Corps' stated reasons for discharging him were not its actual reasons; that, in fact, he was discharged in retaliation for engaging in protected activity. He alleges that he pursued his administrative remedies, but that, on March 31, 2003, the Corps issued a final decision discharging him. On November 30, 2005, he lodged a complaint with the District Court Executive. He sought relief under Section 1 of the Civil Rights Act of 1871, Rev.Stat. § 1979, now codified as 42 U.S.C. § 1983, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.*, and the State of Washington's Law Against Discrimination ("WLAD"), RCW

1 49.60. On March 28, 2007, the Court ordered the United States
2 Marshals Service to serve Mr. Zahn's complaint. On February 7, 2007,
3 the Court ruled that Mr. Zahn's claims for relief under 42 U.S.C. §
4 1983, the ADA, the FMLA, and the WLAD are barred by the relevant
5 statutes of limitations. Mr. Zahn moves the Court to reconsider. The
6 defendants move the Court to dismiss any remaining claims.

7 **RULING**

8 Mr. Zahn was a federal employee. As a result, he may not seek
9 judicial relief under 42 U.S.C. § 1983, the ADA, the FMLA, or state
10 law. *See Russell v. United States Dept. of the Army*, 191 F.3d 1016,
11 1018-20 (9th Cir.1999); *Hiler v. Brown*, 177 F.3d 542, 544 n.4 (6th
12 Cir.1999). The only relief he may seek in federal court is that which
13 is provided by Title VII of the Civil Rights Act of 1964 ("Title
14 VII"), 42 U.S.C. § 2000e-2 *et seq.*, and the Rehabilitation Act of
15 1973, 29 U.S.C. § 701 *et seq.* *Vinieratos v. United States*, 939 F.2d
16 762, 773 (9th Cir.1991). To date, Mr. Zahn has not sought relief
17 under either statute. Moreover, as the record now stands, it is
18 unclear whether any claim he might seek leave to file would be timely.
19 42 U.S.C. § 2000e-16(c); 29 C.F.R. § 1614.407. *See also Colbert v.*
20 *Potter*, 471 F.3d 158, 165-67 (D.C.Cir.2006). In view of the
21 uncertainty, Mr. Zahn will be given an opportunity to amend his
22 complaint to allege violations of Title VII and/or the Rehabilitation
23 Act. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th
24 Cir.1990) (under Rule 12(b)(6), a complaint may not be dismissed
25 unless it appears beyond doubt that the plaintiff can prove no set of
26 facts in support of his claim which would entitle him to relief).

1 However, Mr. Zahn shall not file an amended complaint unless he can
2 make the certification required by Federal Rule of Civil Procedure
3 11(b). If he files an amended complaint, the defendants shall respond
4 as provided by the Federal Rules of Civil Procedure.

5 **IT IS HEREBY ORDERED:**

6 1. Mr. Zahn's motion for reconsideration (**Ct. Rec. 57**) is denied.

7 2. Mr. Zahn's request for leave to commence an interlocutory
8 appeal (**Ct. Rec. 55**) is denied.

9 3. The defendants' motion to dismiss (**Ct. Rec. 61**) is granted in
10 part and denied in part. Except for potential claims arising under
11 either Title VII or the Rehabilitation Act, all of Mr. Zahn's claims
12 are dismissed.

13 4. Mr. Zahn may have until May 23, 2007, in which to file an
14 amended complaint asserting claims for relief under Title VII and/or
15 the Rehabilitation Act. If Mr. Zahn chooses not to file an amended
16 complaint, his existing complaint will be dismissed and the case
17 closed.

18 5. Mr. Zahn shall not file an amended complaint unless he can
19 make the certification required by Rule 11(b).

20 **IT IS SO ORDERED.** The District Court Executive is hereby
21 directed to enter this order and furnish copies to Mr. Zahn and to
22 counsel for the defendant.

23 **DATED** this 25th day of April, 2007.

24 s/ Fred Van Sickle
25 Fred Van Sickle
26 United States District Judge